

Executive Summary – Enforcement Matter – Case No. 43404

DuraTherm, Inc.

RN100890235

Docket No. 2012-0236-MLM-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MLM- IHW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

DuraTherm, 2700 Avenue South, San Leon, Galveston County

Type of Operation:

Waste treatment, storage and disposal facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: July 13, 2012

Comments Received: No

Penalty Information

Total Penalty Assessed: \$37,233

Amount Deferred for Expedited Settlement: \$7,446

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$14,894

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$14,893

Name of SEP: Galveston Bay Foundation – Marsh Mania

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

Executive Summary – Enforcement Matter – Case No. 43404

DuraTherm, Inc.

RN100890235

Docket No. 2012-0236-MLM-E

Investigation Information

Complaint Date(s): August 25, 2011

Complaint Information: Alleged waste (oils, metals, etc.) were poured over the ground causing contamination.

Date(s) of Investigation: September 29, 2011

Date(s) of NOE(s): January 18, 2012

Violation Information

1. Failed to prevent the acceptance of a shipment of unauthorized hazardous waste at the Facility. Specifically, the Respondent accepted and processed a shipment of corrosive hazardous waste (hazardous waste code D002) that the Facility was not authorized to accept and process [30 TEX. ADMIN. CODE § 335.2(b) and Industrial and Hazardous Waste ("IHW") Permit No. 50355, Provision Nos. IV-A and IV-B].
2. Failed to maintain secondary containment free of gaps and cracks. Specifically, secondary containment A for tanks PV-18 through PV-21 had a concrete coating crack about four feet long near PV-20. Secondary containment A-1 for tanks FPV-30 and FPV-31, the containment wall indicated some erosion and the wall edge joining the concrete base had a gap of approximately two inches. Also, the secondary containment for container storage area ("CSA")-2 Roll-off area, Notice of Registration ("NOR") Unit 044, Permitted unit 01, had loose welding and the wall on the back side had developed large open areas from missing panels [30 TEX. ADMIN. CODE §§ 335.152(a)(8) and 305.125 and 40 CODE OF FEDERAL REGULATIONS ("CFR") § 264.193(e)(1)(iii) and IHW Permit No. 50355, Provision Nos. II-C-2-h and V-B-3].
3. Failed to update the Facility's NOR regarding waste management activities. Specifically, the NOR was not updated to show the regulatory status for unit 060, the unit number on the permit and regulatory status for unit 068, the unit number on the permit for unit 069, update the description box comment for unit 059, unit number for CSA-3, and primary Facility contact information [30 TEX. ADMIN. CODE § 335.6(c) and IHW Permit No. 50355, Provision No. II-C-1-h].
4. Failed to use a new manifest for rejected wastes. Specifically, waste manifests 005440020 JJK, 005373755 JJK, and 006442062 JJK were received and partially rejected, then sent back to generator without a new manifest [30 TEX. ADMIN. CODE § 335.152(a)(4) and 40 CFR § 262.20 and IHW Permit No. 50355, Provision No. II-C-1-h].
5. Failed to maintain hazardous waste containers in a CSA closed except when adding or removing wastes. Specifically, the investigator noted one open container of hazardous waste in CSA-2 NOR Unit 044 [30 TEX. ADMIN. CODE §§ 335.69(a)(1)(A) and 335.112(a) and 40 CFR §§ 262.34(c)(1)(i) and 265.173(a) and IHW Permit No. 50355, Provision No. II-C-1].

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6. Failed to maintain records of hazardous and industrial solid waste activities. Specifically, at the time of the investigation, the Respondent could not provide records showing the location of satellite accumulation areas [30 TEX. ADMIN. CODE § 335.9(a)(1)(G)].

7. Failed to record inspections of the air emission control equipment. Specifically, the Respondent did not maintain a record of the Subpart CC tank inspections for olfactory odors and visual observations [30 TEX. ADMIN. CODE §§ 335.112(a)(21) and 335.152(a)(19) and 40 CFR §§ 264.1089(b) and 265.1090(b)].

8. Failed to obtain a used oil registration and Environmental Protection Agency Identification Number (“EPA ID. No.”) prior to conducting used oil activities [30 TEX. ADMIN. CODE § 324.12(2) and 40 CFR §§ 279.51 and 279.73].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent implemented the following corrective measures at the Facility:

- a. Developed and implemented procedures to ensure that unauthorized hazardous waste is not accepted or processed at the Facility on December 21, 2011;
- b. Submitted documentation on February 15, 2012, showing that the secondary containment has been repaired;
- c. Updated the Facility's NOR on October 18, 2011;
- d. Developed and implemented procedures on October 18, 2011 to ensure that rejected wastes are properly manifested;
- e. Developed and implemented procedures on October 18, 2011 to ensure that hazardous waste containers are kept closed except when adding or removing wastes;
- f. Submitted documentation on October 18, 2011, showing the location of satellite accumulation areas;
- g. Began maintaining a record of the tank inspections on October 18, 2011; and
- h. Obtained a used oil registration and EPA ID No. on December 21, 2011.

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Technical Requirements:

The Order will require Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A)

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Mike Pace, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5933; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.
TCEQ SEP Coordinator: Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565
Respondent: Eric Gerstenberg, President, DuraTherm, Inc., P.O. Box 58466, Houston, Texas 77258
Respondent's Attorney: N/A

Attachment A
Docket Number: 2012-0236-MLM-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	DuraTherm, Inc.
Payable Penalty Amount:	Twenty-Nine Thousand Seven Hundred Eighty-Seven Dollars (\$29,787)
SEP Amount:	Fourteen Thousand Eight Hundred Ninety-Three Dollars (\$14,893)
Type of SEP:	Pre-approved
Third-Party Recipient:	Galveston Bay Foundation - "Marsh Mania"
Location of SEP:	Galveston County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative penalty amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

Respondent shall contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Galveston Bay Foundation to be used for the Galveston Bay Foundation "Marsh Mania" as set forth in the agreement between the Third-Party Recipient and the TCEQ. SEP monies will be used to restore shoreline elevations, growing plants for shoreline restoration, and planting new habitat. Historic subsidence and erosion have resulted in shoreline elevations which are too low to support vegetation. This project will seek to raise elevations by scraping and terracing. Scraping involves the use of earthmoving equipment to grade an eroded, bluff-like shoreline so that it slopes gradually towards the water resulting in the ability of plant growth. Terracing uses earthmoving equipment to create small levees by burrowing and stacking sediment in shallow water. The high elevation can then be planted with emergent vegetation. SEP monies will be used to pay for the direct costs of the implementation of the project, including material, equipment, and labor costs.

Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

DuraTherm, Inc.
Agreed Order - Attachment A

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing food and shelter for a variety of native fish, shellfish, birds, and mammals. The marshes will also result in the reduction of pollution by filtering particulates and excess nutrients from runoff. In addition, the new habitat will protect shorelines from erosion and will help reduce the effects of flooding.

C. Minimum Expenditure

Respondent shall contribute at least the SEP amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent must contribute the SEP amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Mr. Bob Stokes, President
Galveston Bay Foundation
17330 Highway 3
Webster, Texas 77598

3. Records and Reporting

Concurrent with the payment of the SEP amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP amount.

DuraTherm, Inc.
Agreed Order - Attachment A

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

Respondent shall also mail a copy of the check to the Enforcement Division SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	23-Jan-2012	Screening	24-Jan-2012	EPA Due	
	PCW	24-Jan-2012				

RESPONDENT/FACILITY INFORMATION

Respondent	DuraTherm, Inc.		
Reg. Ent. Ref. No.	RN100890235		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	43404	No. of Violations	1
Docket No.	2012-0236-MLM-E	Order Type	1660
Media Program(s)	Used Oil	Government/Non-Profit	No
Multi-Media	Industrial and Hazardous Waste	Enf. Coordinator	Mike Pace
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	12.0% Enhancement	Subtotals 2, 3, & 7	\$30
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Notes Enhancement for one NOV with similar violations, four NOVs with dissimilar violations, and a reduction for one Notice of Audit.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$62
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$6
Approx. Cost of Compliance \$500
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$218
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	\$218
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$218
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DEFERRAL	20.0% Reduction	Adjustment	-\$43
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$175
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Screening Date 24-Jan-2012

Docket No. 2012-0236-MLM-E

PCW

Respondent DuraTherm, Inc.

Policy Revision 3 (September 2011)

Case ID No. 43404

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100890235

Media [Statute] Used Oil

Enf. Coordinator Mike Pace

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	4	8%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 12%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for one NOV with similar violations, four NOVs with dissimilar violations, and a reduction for one Notice of Audit.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 12%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 12%

Screening Date 24-Jan-2012

Docket No. 2012-0236-MLM-E

PCW

Respondent DuraTherm, Inc.

Policy Revision 3 (September 2011)

Case ID No. 43404

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100890235

Media [Statute] Used Oil

Enf. Coordinator Mike Pace

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 324.12(2) and 40 Code of Federal Regulations §§ 279.51 and 279.73

Violation Description Failed to obtain a used oil registration and Environmental Protection Agency Identification Number ("EPA ID No.") prior to conducting used oil activities.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor
		x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 1

83 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$250

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$62

Before NOV NOV to EDP RP/Settlement Offer

Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes

The Respondent came into compliance on December 21, 2011, prior to the NOE dated January 18, 2012.

Violation Subtotal \$188

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6

Violation Final Penalty Total \$218

This violation Final Assessed Penalty (adjusted for limits) \$218

Economic Benefit Worksheet

Respondent DuraTherm, Inc.
Case ID No. 43404
Reg. Ent. Reference No. RN100890235
Media Used Oil
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$500	29-Sep-2011	21-Dec-2011	0.23	\$6	n/a	\$6
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to obtain a registration and EPA ID No. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$6

DATES	Assigned	23-Jan-2012	Screening	24-Jan-2012	EPA Due	
	PCW	24-Jan-2012				

RESPONDENT/FACILITY INFORMATION				
Respondent	DuraTherm, Inc.			
Reg. Ent. Ref. No.	RN100890235			
Facility/Site Region	12-Houston	Major/Minor Source	Major	

CASE INFORMATION			
Enf./Case ID No.	43404	No. of Violations	7
Docket No.	2012-0236-MLM-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No
Multi-Media	Used Oil	Enf. Coordinator	Mike Pace
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section			
TOTAL BASE PENALTY (Sum of violation base penalties)		Subtotal 1	\$41,250
ADJUSTMENTS (+/-) TO SUBTOTAL 1			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.			
Compliance History	12.0% Enhancement	Subtotals 2, 3, & 7	\$4,950
Notes	Enhancement for one NOV with similar violations, four NOVs with dissimilar violations, and a reduction for one Notice of Audit.		
Culpability	No 0.0% Enhancement	Subtotal 4	\$0
Notes	The Respondent does not meet the culpability criteria.		
Good Faith Effort to Comply Total Adjustments		Subtotal 5	\$9,185
Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
<div style="display: flex; justify-content: space-between;"> Total EB Amounts \$71 </div> <div style="display: flex; justify-content: space-between;"> Approx. Cost of Compliance \$5,200 </div>		*Capped at the Total EB \$ Amount	
SUM OF SUBTOTALS 1-7		Final Subtotal	\$37,015
OTHER FACTORS AS JUSTICE MAY REQUIRE		0.0%	Adjustment
Reduces or enhances the Final Subtotal by the indicated percentage.			
Notes			
Final Penalty Amount			\$37,015
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty	
		\$37,015	
DEFERRAL		20.0% Reduction	Adjustment
Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)			
Notes	Deferral offered for expedited settlement.		
PAYABLE PENALTY			\$29,612

Screening Date 24-Jan-2012

Docket No. 2012-0236-MLM-E

PCW

Respondent DuraTherm, Inc.

Policy Revision 3 (September 2011)

Case ID No. 43404

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100890235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Mike Pace

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	4	8%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 12%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with similar violations, four NOVs with dissimilar violations, and a reduction for one Notice of Audit.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 12%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 12%

Screening Date 24-Jan-2012

Docket No. 2012-0236-MLM-E

PCW

Respondent DuraTherm, Inc.

Policy Revision 3 (September 2011)

Case ID No. 43404

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100890235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Mike Pace

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 335.2(b) and Industrial Hazardous Waste ("IHW") Permit No. 50355, Provision Nos. IV-A and IV-B

Violation Description

Failed to prevent the acceptance of a shipment of unauthorized hazardous waste at the Facility. Specifically, the Respondent accepted and processed a shipment of corrosive hazardous waste (hazardous waste code D002) that the Facility was not authorized to accept and process.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

83 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$3,750

One single event is recommended for the shipment.

Good Faith Efforts to Comply

25.0% Reduction

\$937

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes

The Respondent came into compliance on December 21, 2011, prior to the Notice of Enforcement ("NOE") dated January 18, 2012.

Violation Subtotal \$2,813

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$11

Violation Final Penalty Total \$3,263

This violation Final Assessed Penalty (adjusted for limits) \$3,263

Economic Benefit Worksheet

Respondent DuraTherm, Inc.
Case ID No. 43404
Reg. Ent. Reference No. RN100890235
Media Industrial and Hazardous Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$1,000	29-Sep-2011	21-Dec-2011	0.23	\$11	n/a	\$11
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and implement procedures to ensure that unauthorized hazardous waste is not accepted or processed. The date required is the investigation date and the final date is the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$11

Screening Date 24-Jan-2012

Docket No. 2012-0236-MLM-E

PCW

Respondent DuraTherm, Inc.

Policy Revision 3 (September 2011)

Case ID No. 43404

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100890235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Mike Pace

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code §§ 335.152(a)(8) and 305.125 and 40 Code Of Federal Regulations ("CFR") § 264.193(e)(1)(iii) and IHW Permit No. 50355, Provision Nos. II-C-2-h and V-B-3

Violation Description

Failed to maintain secondary containment free of gaps and cracks. Specifically, secondary containment A for tanks PV-18 through PV-21 had a concrete coating crack about four feet long near PV-20. Secondary containment A-1 for tanks FPV-30 and FPV-31, the containment wall indicated some erosion and the wall edge joining the concrete base had a gap of approximately two inches. Also, the secondary containment for container storage area ("CSA")-2 Roll-off area, Notice of Registration ("NOR") Unit 044, Permitted unit 01, had loose welding and the wall on the back side had developed large open areas from missing panels.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 2

117 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$7,500

Two quarterly events are recommended from the September 29, 2011 investigation date to the January 24, 2012 screening date.

Good Faith Efforts to Comply

10.0% Reduction

\$750

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes

The Respondent came into compliance on February 15, 2012, after the NOE dated January 18, 2012.

Violation Subtotal \$6,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$53

Violation Final Penalty Total \$7,650

This violation Final Assessed Penalty (adjusted for limits) \$7,650

Economic Benefit Worksheet

Respondent DuraTherm, Inc.
Case ID No. 43404
Reg. Ent. Reference No. RN100890235
Media Industrial and Hazardous Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$2,000	29-Sep-2011	15-Feb-2012	0.38	\$3	\$51	\$53
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain secondary containment. The date required is the investigation date and the final date is the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$53

Screening Date 24-Jan-2012

Docket No. 2012-0236-MLM-E

PCW

Respondent DuraTherm, Inc.

Policy Revision 3 (September 2011)

Case ID No. 43404

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100890235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Mike Pace

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 335.6(c) and IHW Permit No. 50355, Provision No. II-C-1-h

Violation Description

Failed to update the Facility's NOR regarding waste management activities. Specifically, the NOR was not updated to show the regulatory status for unit 060, the unit number on the permit and regulatory status for unit 068, the unit number on the permit for unit 069, update the description box comment for unit 059, unit number for CSA-3, and primary Facility contact information.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

19 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$3,750

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$937

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes

The Respondent came into compliance on October 18, 2011, prior to the NOE dated January 18, 2012.

Violation Subtotal \$2,813

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$3,263

This violation Final Assessed Penalty (adjusted for limits) \$3,263

Economic Benefit Worksheet

Respondent DuraTherm, Inc.
Case ID No. 43404
Reg. Ent. Reference No. RN100890235
Media Industrial and Hazardous Waste
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$200	29-Sep-2011	18-Oct-2011	0.05	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to update the Facility's NOR. The date required is the investigation date and the final date is the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

TOTAL

\$1

Screening Date 24-Jan-2012

Docket No. 2012-0236-MLM-E

PCW

Respondent DuraTherm, Inc.

Policy Revision 3 (September 2011)

Case ID No. 43404

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100890235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Mike Pace

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 335.152(a)(4) and 40 CFR § 262.20 and IHW Permit No. 50355, Provision No. II-C-1-h

Violation Description

Failed to use a new manifest for rejected wastes. Specifically, waste manifests 005440020 JJK, 005373755 JJK, and 006442062 JJK were received and partially rejected, then sent back to generator without a new manifest.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

	Major	Moderate	Minor
Falsification			
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 3

3 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$11,250

Three single events are recommended (one for each manifest).

Good Faith Efforts to Comply

25.0% Reduction

\$2,812

Before NOV NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes

The Respondent came into compliance on October 18, 2011, prior to the NOE dated January 18, 2012.

Violation Subtotal \$8,438

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$9,788

This violation Final Assessed Penalty (adjusted for limits) \$9,788

Economic Benefit Worksheet

Respondent DuraTherm, Inc.
Case ID No. 43404
Reg. Ent. Reference No. RN100890235
Media Industrial and Hazardous Waste
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	29-Sep-2011	18-Oct-2011	0.05	\$1	n/a	\$1
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to update the operating procedure to ensure that all wastes are received with a manifest. The date required is the investigation date and the final date is the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$1

Screening Date 24-Jan-2012

Docket No. 2012-0236-MLM-E

PCW

Respondent DuraTherm, Inc.

Policy Revision 3 (September 2011)

Case ID No. 43404

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100890235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Mike Pace

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code §§ 335.69(a)(1)(A) and 335.112(a) and 40 CFR §§ 262.34(c)(1)(i) and 265.173(a) and IHW Permit No. 50355, Provision No. II-C-1

Violation Description

Failed to maintain hazardous waste containers in a CSA closed except when adding or removing wastes. Specifically, the investigator noted one open container of hazardous waste in CSA-2 NOR Unit 044.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 30.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 1

19 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$7,500

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$1,875

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes The Respondent came into compliance on October 18, 2011, prior to the NOE dated January 18, 2012.

Violation Subtotal \$5,625

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$6,525

This violation Final Assessed Penalty (adjusted for limits) \$6,525

Economic Benefit Worksheet

Respondent DuraTherm, Inc.
Case ID No. 43404
Reg. Ent. Reference No. RN100890235
Media Industrial and Hazardous Waste
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	29-Sep-2011	18-Oct-2011	0.05	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to develop and implement procedures to ensure that containers are closed except when adding or removing waste. The date required is the investigation date and the final date is the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$1

Screening Date 24-Jan-2012

Docket No. 2012-0236-MLM-E

PCW

Respondent DuraTherm, Inc.

Policy Revision 3 (September 2011)

Case ID No. 43404

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100890235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Mike Pace

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code § 335.9(a)(1)(G)

Violation Description

Failed to maintain records of hazardous and industrial solid waste activities. Specifically, at the time of the investigation, the Respondent could not provide records showing the location of satellite accumulation areas.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

19 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$3,750

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$937

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes

The Respondent came into compliance on October 18, 2011, prior to the NOE dated January 18, 2012.

Violation Subtotal \$2,813

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$3,263

This violation Final Assessed Penalty (adjusted for limits) \$3,263

Economic Benefit Worksheet

Respondent DuraTherm, Inc.
Case ID No. 43404
Reg. Ent. Reference No. RN100890235
Media Industrial and Hazardous Waste
Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	29-Sep-2011	18-Oct-2011	0.05	\$1	n/a	\$1
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain records showing the location of satellite accumulation areas. The date required is the investigation date and the final date is the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$1

Screening Date 24-Jan-2012

Docket No. 2012-0236-MLM-E

PCW

Respondent DuraTherm, Inc.

Policy Revision 3 (September 2011)

Case ID No. 43404

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100890235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Mike Pace

Violation Number 7

Rule Cite(s) 30 Tex. Admin. Code §§ 335.112(a)(21) and 335.152(a)(19) and 40 CFR §§ 264.1089(b) and 265.1090(b)

Violation Description

Failed to record inspections of the air emission control equipment. Specifically, the Respondent did not maintain a record of the Subpart CC tank inspections for olfactory odors and visual observations.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor
		x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

1

19

Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$3,750

One single event is recommended.

Good Faith Efforts to Comply

25.0%

Reduction

\$937

Before NOV NOV to EDP RP/Settlement Offer

Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes

The Respondent came into compliance on October 18, 2011, prior to the NOE dated January 18, 2012.

Violation Subtotal \$2,813

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$3,263

This violation Final Assessed Penalty (adjusted for limits) \$3,263

Economic Benefit Worksheet

Respondent DuraTherm, Inc.

Case ID No. 43404

Reg. Ent. Reference No. RN100890235

Media Industrial and Hazardous Waste

Violation No. 7

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	29-Sep-2011	18-Oct-2011	0.05	\$1	n/a	\$1
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to record and maintain inspection records of the air emission control equipment. The date required is the investigation date and the final date is the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$1

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603349820	DuraTherm, Inc.	Classification: AVERAGE	Rating: 3.00
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Regulated Entity:	RN100890235	DuraTherm	Classification: AVERAGE	Site Rating: 3.00
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ID Number(s):	AIR NEW SOURCE PERMITS	REGISTRATION	14291
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	GB0101M
	AIR NEW SOURCE PERMITS	AFS NUM	4816700042
	AIR NEW SOURCE PERMITS	REGISTRATION	85676
	AIR NEW SOURCE PERMITS	REGISTRATION	87443
	INDUSTRIAL AND HAZARDOUS WASTE	EPA ID	TXD981053770
	INDUSTRIAL AND HAZARDOUS WASTE	SOLID WASTE REGISTRATION # (SWR)	34814
	INDUSTRIAL AND HAZARDOUS WASTE	PERMIT	50355
	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	0840217
	WASTEWATER	PERMIT	WQ0004086000
	WASTEWATER	EPA ID	TX0117757
	POLLUTION PREVENTION PLANNING	ID NUMBER	P03840
	USED OIL	REGISTRATION	A86130
	USED OIL	EPA ID	TXD981053770
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	GB0101M

Location:	2700 AVENUE S, SAN LEON, TX, 77539
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TCEQ Region:	REGION 12 - HOUSTON
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Date Compliance History Prepared:	January 26, 2012
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Agency Decision Requiring Compliance History:	Enforcement
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Compliance Period:	January 26, 2007 to January 26, 2012
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TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name:	Mike Pace	Phone:	(817) 588-5933
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Site Compliance History Components

- Has the site been in existence and/or operation for the full five year compliance period? YES
- Has there been a (known) change in ownership/operator of the site during the compliance period? YES
- If **YES**, who is the current owner/operator? DuraTherm, Inc.
- If **YES**, who was/were the prior owner(s)/operator(s)? Duratherm Asset Acquisition Corp.
- If **YES**, when did the change(s) in owner or operator occur? June 19, 2008
- Rating Date: 9/1/2011 Repeat Violator: NO

Components (Multimedia) for the Site :

- Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
- Any criminal convictions of the state of Texas and the federal government.
N/A
- Chronic excessive emissions events.
N/A
- The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 03/30/2007 (554167)
 - 04/25/2008 (681098)
 - 02/20/2009 (724795)

4 06/19/2009 (748483)
 5 12/10/2009 (797155)
 6 03/17/2010 (798705)
 7 04/23/2010 (799811)
 8 05/04/2010 (800445)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 04/25/2008 (681098) CN603349820
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(4)
 Description: BACT - MONITORING/REPORTING VIOLATIONS
 Date: 02/19/2009 (724795) CN603349820
 Self Report? NO Classification: Major
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(e)
 Description: Failure by the regulated entity to be under the direct supervision of a licensed water works operator at all times.
 Date: 12/10/2009 (797155) CN603349820
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(3)(C)
 5A THSC Chapter 341, SubChapter A 341.0315(c)
 Description: Violated the maximum contaminant level for arsenic during the fourth quarter of 2009.
 Date: 02/23/2010 (799811)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(3)
 40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(a)(3)
 Description: Failed to properly label a three cubic yard container with the words "Hazardous Waste."
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 335, SubChapter F 335.152(a)(1)
 40 CFR Chapter 264, SubChapter I, PT 264, SubPT C 264.15(d)
 Permit Provision III.D. PERMIT
 Description: Failed to adequately complete daily inspection logs on tanks, loading and unloading areas, and container storage areas.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 335, SubChapter A 335.9(a)(1)(G)
 Description: Failed to have a description of the SAAs within the facility or during the review of the exit interview form.
 Date: 03/17/2010 (798705) CN603349820
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(3)(C)
 5A THSC Chapter 341, SubChapter A 341.0315(c)
 Description: Violated the maximum contaminant level for arsenic during the first quarter of 2010.

F. Environmental audits.

Notice of Intent Date: 08/30/2011 (952260)
 No DOV Associated

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DURATHERM, INC.
RN100890235

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2012-0236-MLM-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding DuraTherm, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 371, and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a waste treatment, storage, and disposal facility at 2700 Avenue South in San Leon, Galveston County, Texas (the "Facility").
2. The Facility involves or involved the management of industrial hazardous waste ("IHW") and used oil as defined in TEX. HEALTH & SAFETY CODE chs. 361 and 371.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 23, 2012.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Thirty-Seven Thousand Two Hundred Thirty-Three Dollars (\$37,233) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Fourteen Thousand Eight Hundred Ninety-Four Dollars (\$14,894) of the administrative penalty.

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and Seven Thousand Four Hundred Forty-Six Dollars (\$7,446) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty. Fourteen Thousand Eight Hundred Ninety-Three Dollars (\$14,893) shall be conditionally offset by the Respondents completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Developed and implemented procedures to ensure that unauthorized hazardous waste is not accepted or processed at the Facility on December 21, 2011;
 - b. Submitted documentation on February 15, 2012, showing that the secondary containment has been repaired;
 - c. Updated the Facility's Notice of Registration ("NOR") on October 18, 2011;
 - d. Developed and implemented procedures on October 18, 2011 to ensure that rejected wastes are properly manifested;
 - e. Developed and implemented procedures on October 18, 2011 to ensure that hazardous waste containers are kept closed except when adding or removing wastes;
 - f. Submitted documentation on October 18, 2011, showing the location of satellite accumulation areas;
 - g. Began maintaining a record of the tank inspections on October 18, 2011; and
 - h. Obtained a used oil registration and Environmental Protection Agency Identification Number ("EPA ID No.") on December 21, 2011.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

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12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to prevent the acceptance of a shipment of unauthorized hazardous waste at the Facility, in violation of 30 TEX. ADMIN. CODE § 335.2(b) and IHW Permit No. 50355, Provision Nos. IV-A and IV-B, as documented during an investigation conducted on September 29, 2011. Specifically, the Respondent accepted and processed a shipment of corrosive hazardous waste (hazardous waste code D002) that the Facility was not authorized to accept and process.
2. Failed to maintain secondary containment free of gaps and cracks, in violation of 30 TEX. ADMIN. CODE §§ 335.152(a)(8) and 305.125 and 40 CODE OF FEDERAL REGULATIONS ("CFR") § 264.193(e)(1)(iii) and IHW Permit No. 50355, Provision Nos. II-C-2-h and V-B-3, as documented during an investigation conducted on September 29, 2011. Specifically, secondary containment A for tanks PV-18 through PV-21 had a concrete coating crack about four feet long near PV-20. Secondary containment A-1 for tanks FPV-30 and FPV-31, the containment wall indicated some erosion and the wall edge joining the concrete base had a gap of approximately two inches. Also, the secondary containment for container storage area ("CSA")-2 Roll-off area, NOR Unit 044, Permitted unit 01, had loose welding and the wall on the back side had developed large open areas from missing panels.
3. Failed to update the Facility's NOR regarding waste management activities, in violation of 30 TEX. ADMIN. CODE § 335.6(c) and IHW Permit No. 50355, Provision No. II-C-1-h, as documented during an investigation conducted on September 29, 2011. Specifically, the NOR was not updated to show the regulatory status for unit 060, the unit number on the permit and regulatory status for unit 068, the unit number on the permit for unit 069, update the description box comment for unit 059, unit number for CSA-3, and primary Facility contact information.
4. Failed to use a new manifest for rejected wastes, in violation of 30 TEX. ADMIN. CODE § 335.152(a)(4) and 40 CFR § 262.20 and IHW Permit No. 50355, Provision No. II-C-1-h, as documented during an investigation conducted on September 29, 2011. Specifically, waste manifests 005440020 JJK, 005373755 JJK, and 006442062 JJK were received and partially rejected, then sent back to generator without a new manifest.
5. Failed to maintain hazardous waste containers in a CSA closed except when adding or removing wastes, in violation of 30 TEX. ADMIN. CODE §§ 335.69(a)(1)(A) and 335.112(a) and 40 CFR §§ 262.34(c)(1)(i) and 265.173(a) and IHW Permit No. 50355, Provision No. II-C-1, as documented during an investigation conducted on September 29, 2011. Specifically, the investigator noted one open container of hazardous waste in CSA-2 NOR Unit 044.
6. Failed to maintain records of hazardous and industrial solid waste activities, in violation of 30 TEX. ADMIN. CODE § 335.9(a)(1)(G), as documented during an investigation conducted on September 29, 2011. Specifically, at the time of the investigation the

DuraTherm, Inc.
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Respondent could not provide records showing the location of satellite accumulation areas.

7. Failed to record inspections of the air emission control equipment, in violation of 30 TEX. ADMIN. CODE §§ 335.112(a)(21) and 335.152(a)(19) and 40 CFR §§ 264.1089(b) and 265.1090(b), as documented during an investigation conducted on September 29, 2011. Specifically, the Respondent did not maintain a record of the Subpart CC tank inspections for olfactory odors and visual observations.
8. Failed to obtain a used oil registration and EPA ID. No. prior to conducting used oil activities, in violation of 30 TEX. ADMIN. CODE § 324.12(2) and 40 CFR §§ 279.51 and 279.73, as documented during an investigation conducted on September 29, 2011.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: DuraTherm, Inc., Docket No. 2012-0236-MLM-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I Paragraph 6 Jurisdiction and Stipulations above, Fourteen Thousand Eight Hundred Ninety-Three Dollars (\$14,893) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to

DuraTherm, Inc.
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- the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
 6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
 7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
 8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

8/10/12
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

5/15/12
Date

ERIC GERSTENBERG
Name (Printed or typed)
Authorized Representative of
DuraTherm, Inc.

PRESIDENT
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

Attachment A
Docket Number: 2012-0236-MLM-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: DuraTherm, Inc.

Payable Penalty Amount: Twenty-Nine Thousand Seven Hundred Eighty-Seven Dollars (\$29,787)

SEP Amount: Fourteen Thousand Eight Hundred Ninety-Three Dollars (\$14,893)

Type of SEP: Pre-approved

Third-Party Recipient: Galveston Bay Foundation - "Marsh Mania"

Location of SEP: Galveston County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative penalty amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

Respondent shall contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Galveston Bay Foundation to be used for the Galveston Bay Foundation "Marsh Mania" as set forth in the agreement between the Third-Party Recipient and the TCEQ. SEP monies will be used to restore shoreline elevations, growing plants for shoreline restoration, and planting new habitat. Historic subsidence and erosion have resulted in shoreline elevations which are too low to support vegetation. This project will seek to raise elevations by scraping and terracing. Scraping involves the use of earthmoving equipment to grade an eroded, bluff-like shoreline so that it slopes gradually towards the water resulting in the ability of plant growth. Terracing uses earthmoving equipment to create small levees by burrowing and stacking sediment in shallow water. The high elevation can then be planted with emergent vegetation. SEP monies will be used to pay for the direct costs of the implementation of the project, including material, equipment, and labor costs.

Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

DuraTherm, Inc.
Agreed Order - Attachment A

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing food and shelter for a variety of native fish, shellfish, birds, and mammals. The marshes will also result in the reduction of pollution by filtering particulates and excess nutrients from runoff. In addition, the new habitat will protect shorelines from erosion and will help reduce the effects of flooding.

C. Minimum Expenditure

Respondent shall contribute at least the SEP amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent must contribute the SEP amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Mr. Bob Stokes, President
Galveston Bay Foundation
17330 Highway 3
Webster, Texas 77598

3. Records and Reporting

Concurrent with the payment of the SEP amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP amount.

DuraTherm, Inc.
Agreed Order - Attachment A

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

Respondent shall also mail a copy of the check to the Enforcement Division SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.